

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
BRIEF**

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 75-7270

- - - - - X - - - - -

CHARLES MERRILL MOUNT,

Plaintiff-Appellant,

- v -

ALLEN HERBERT ARROW, MICHAEL
WARD STOUT & JANICE LEACH,

Defendants-Appellees.

BRIEF FOR THE DEFENDANTS-APPELLEES

ARROW SILVERMAN & PARCHER, P.C.
Attorneys for Defendants-Appellees
1370 Avenue of the Americas
New York, New York
(212) 586-1451

Of Counsel:

ALLEN H. ARROW
HOWARD G. LEVENTHAL

EXHIBIT H

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CHARLES MERRILL MOUNT,

Plaintiff,

-against-

ORENSTEIN ARROW SILVERMAN
& PARCHER, P.C.,

Defendant.

NOTICE OF CROSS-MOTION

Index No. 09177/75

S I R S :

PLEASE TAKE NOTICE that upon the summons and complaint verified the 14th day of April, 1975, and upon the defendant's answer, verified the 5th day of May, 1975, and upon the annexed affidavit of Allen H. Arrow, sworn to the 16th day of June, 1975, and the exhibits annexed thereto, and upon defendant's demand for a bill of particulars, dated May 21, 1975, and upon the plaintiff's bill of particulars dated June 3, 1975, and upon plaintiff's notice of motion for summary judgment and affidavit sworn to the 24th day of May, 1975, defendant will cross-move this Court, pursuant to CPLR 2215, at a Special Term, Part I thereof, to be held at the County Courthouse, 60 Centre Street, New York, New York on the 20th day of June, 1975, at 9:30 o'clock in the

forenoon, or as soon thereafter as counsel can be heard, for an order:

- (a) pursuant to CPLR 3211(a) dismissing the complaint;
- (b) in the alternative, staying this action pending the exhaustion of appeals in a pending action entitled Charles Merrill Mount v Allen Herbert Arrow, Michael Ward Stout & Janice Leach, pending in the United States Court of Appeals for the Second Circuit, Docket No. 75-7270;
- (c) pursuant to CPLR 3042(d), precluding plaintiff from giving evidence of items as to which a defective or insufficient bill of particulars was furnished, or, in the alternative, directing the service of a further bill;
- (d) in the alternative, pursuant to CPLR 602(b), consolidating this action with another pending action entitled Allen H. Arrow v. Charles Merrill Mount now pending in the Supreme Court of the State of New York, County of Queens, Index No. 3354/75;

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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ALLEN H. ARROW, :

Plaintiff, :

-against- : AFFIDAVIT

CHARLES MERRILL MOUNT, : Index No.

Defendant. :

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STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

ALLEN H. ARROW, being duly sworn, deposes and says:

1. I am the plaintiff herein, an attorney duly licensed to practice before the courts of New York and a member of the law firm Orenstein Arrow Silverman & Parcher, P.C. I am fully familiar with the facts alleged herein, and submit this affidavit in support of my application for a preliminary injunction and temporary restraining order pursuant to CPLR (55001) and (6301) et seq. No other provisional remedy has been secured or sought in this action against the defendant herein, and no prior application for injunctive relief has been made.

2. This action arises out of a sorry, sordid, and sad set of family problems encountered by the defendant, Charles Merrill Mount, who is also a cousin and former occasional client of mine.

3. The underlying cause of this action is the abandonment of the defendant Mount by his wife, Sarah Long Mount, who took with her to Ireland their four minor children, on or about June 10, 1971. For some reason, inexplicable to plaintiff, defendant unfoundedly blamed and continues to blame plaintiff for this abandonment as well as for the subsequent related woes (too numerous to catalogue herein) which have befallen plaintiff's unfortunate kinsman. Defendant alleges that his estranged wife, Sarah Long Mount, or a relative of hers, caused the contents of a house in Dublin, Ireland, allegedly belonging to defendant, to be removed to her own residence. I have no knowledge of this. Before these events, it appears that defendant's wife secured some type of judgment against defendant from an Irish court which, upon information and belief, awarded her custody of her children (who were born in Ireland) as well as the matrimonial domicile (located in Ireland), and enjoined defendant from harassing her, for violation of which order defendant was

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joint int-
fever

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imprisoned for contempt of court and deported to the United States. In his mind, defendant has conjured up a massive conspiracy against him of which I am allegedly a part.

4. After failing in his attempts at obtaining a reconciliation with his estranged wife, defendant threatened to institute a legal action against those alleged conspirators (myself included) whom he blamed for his misfortunes unless his wife and children and the contents of his home in Dublin, Ireland, were restored to him forthwith.

5. In total, reckless and wanton disregard of the realities of the situation, and notwithstanding the inefficacy of myself to grant him the relief sought, the defendant proceeded to make good his threat, by instituting an action in the United States District Court for the Southern District of New York, 75 Civ. 173 (hereinafter referred to as the "Federal action," see Exhibit 16 to the Complaint), against a former associate of this law firm, a stenographic secretary formerly employed by this firm, and myself, seeking Five Million Dollars (\$5,000,000.00) in damages, the arrest and disbarment of myself and the former associate, and the denaturalization and deportation of the former secretary. In the complaint filed in the Federal action, a rambling document too discursive to analyze count by count, Mr. Mount accused me of having been

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part of a criminal conspiracy to spirit away (i.e. kidnap) his wife and children. to burglarize his home in Dublin, Ireland, of personal property valued at \$20,000 (i.e. grand larceny), to deprive him of his civil rights, and to defraud him.* In addition, Mr. Mount accused me of moral turpitude, perjury and unfitness to engage in my profession as an attorney of law, and to serve as a member of this law firm.

6. Recognizing the groundless nature of his Federal action, Mr. Mount admitted under oath that "his purpose in bringing [that] litigation . . . [was] to force a settlement" of his alleged grievances against me, (see Exhibit 17 to the Complaint herein), viz. the return of his wife, children and property, all of which is obviously beyond my control to satisfy.

7. I have made a motion to dismiss the Federal action for lack of subject matter jurisdiction, which motion is presently sub judice. However, Mr. Mount, while prosecuting his Federal "criminal" action pro se, refuses to abide by the rules which govern the conduct of litigants.

* The acts alleged to have been committed by me in the Federal action are identical to those alleged by Mr. Mount in no less than two other actions commenced by Mr. Mount in the same Court, 74 Civ. 321 and 74 Civ. 1244 (see Exhibits 18 and 19 to the Complaint), to have been committed by one George Long; and also of a habeas corpus proceeding commenced by Mr. Mount against the Irish Consulate General in this Court (see Exhibit 12 to the Complaint); and which Mr. Mount has alleged are the subject of nine (9) proceedings brought by him in Federal and State courts (see Exhibit 10 to the Complaint).

8. Not willing to let the wheels of justice turn in their own orderly track, Mr. Mount has engaged in a course of conduct best described as "harassment" as that term is used in the vernacular and within the meaning of §240.25 of the New York Penal Law.*

9. Defendant has not confined his activities against me to the courtroom arena. If his activities were so limited, I would be content to let the law take its course in the Federal action. However, Mr. Mount has threatened to send (and, in certain instances, has already sent) letters to " my colleagues, clients and associates. . . outlining his grievances." See Exhibit 9 to the Complaint herein. He has threatened to distribute a thousand copies of a false, defamatory statement, a copy of which is annexed to the complaint as Exhibit 9A, to "newspapers, the Law Journal, your colleagues, clients, and associates, on Friday, March 21, 1975" unless I comply with his preposterous demands. To show that he was not bluffing, Mr. Mount enclosed a statement purportedly relating to yet another litigation in which he is involved, of which he allegedly distributed over 300 copies.

* Although I believe that I have adequate grounds for swearing out a criminal complaint against Mr. Mount for harassment, it is not my desire to see my cousin, who is not a well person, acquire a criminal record in our country (although he already has one overseas), and be incarcerated along with common criminals, notwithstanding his professed desire to see me "taken into custody and held in a Federal House of Detention" See Exhibit 3 to the Complaint herein,

2 (These letters and the allegations contained therein are false, unwarranted and unjustified, and are intended solely to damage the personal and professional reputation of the deponent and my law firm to harass, annoy, alarm and vex me, and serve no legitimate purpose.

2 (10. On or about February 26, 1975, defendant accused me and a former associate of arranging for thieves to steal defendant's property in Ireland (see Exhibit 6 to the Complaint herein), an allegation which is similarly false, unwarranted and unjustified, and intended solely to damage my personal and professional reputation and that of my law firm, and serves no legitimate purpose.

2 11. Mr. Mount has already communicated with Harold Orenstein, Esq., and L. Peter Parcher, Esq., members of my firm, about defendant's unfounded allegations against me, and has threatened to have the firm "ordered disbanded, and all members and associates shown to have been knowingly involved . . . disbarred," even though the firm was not named as a party in Mr. Mount's Federal action nor even alleged to have been involved in the alleged "conspiracy." See Exhibit 7 to the Complaint. Notwithstanding, Mr. Mount has accused the law firm of having "defrauded a client of valuable property and stolen his four minor children without due process of law. See Exhibit 9 to the Complaint.

12. On or about March 8, 1975 defendant sent still another letter to Peter A. Herbert, one of the members of my firm, accusing this firm of acting "like gangsters," defrauding its clients, stealing their children, and ominously warning that I "would" be well advised to close [my] doors and run." See Exhibit 20 to the Complaint herein.

13. The present state of affairs has progressed to the point where Mr. Mount's actions can no longer be tolerated. He has shown himself to be in earnest about his threats, and scarcely a day goes by when at least one of my colleagues does not receive a letter from him spreading venom or threats.

14. Unless defendant is permanently enjoined from pursuing and continuing such a course of conduct, which has annoyed, alarmed and vexed me, there is a clear and present danger that he will further and widen his dissemination of material defamatory to my personal and professional reputation, and cause me to suffer irreparable injury.

15. There is ample precedent for the granting of the relief sought. See., e.g., Federation of Jewish Philanthropies v. Association of Jewish Anti-Poverty Workers, reported in the New York Law Journal on March 14, 1975. wherein Mr. Justice Harry Frank issued an order to show cause with a temporary

restraining order, and Mr. Justice Nathaniel T. Helman granted plaintiffs a preliminary injunction restraining the defendants from engaging in demonstrations, sit-ins, picketing and other activities. The language of Mr. Justice Helman's opinion is very apt to the situation at hand: "Ample has been shown to establish that defendants have transcended their right of free speech and moral persuasion. . . and that their activities have been deliberately disruptive and deliberately harmful, with resultant irreparable damage to plaintiffs." In the case at bar, as in the Federation of Jewish Philanthropies case, the relief sought is not overbroad: Mr. Mount, under the terms of the temporary restraining order and preliminary injunction sought, is free to continue to prosecute his existing action against plaintiff, and/or to report any alleged violations of law by plaintiff to the appropriate authorities duly charged with conducting such investigations and/or prosecuting the same. What he would be restrained from doing is wantonly disseminating his unfounded allegations to my family, friends, business associates and clients, in a manner intended to cause irreparable harm to me.

16. While it grieves me to say this about a blood relative particularly one to whom I had tried to be of help, it is obvious from a reading of Mr. Mount's pleadings and affidavits

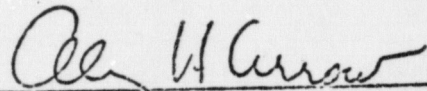
in the Federal action, and from his letters, that his mind is no longer functioning rationally. However, by the letters which defendant has sent, continues to send, and threatens to send to persons not privy or party to this or the Federal action, the defendant is obviously attempting to enveigle my colleagues, clients and associates to abandon me, just as his wife and children abandoned him. Should he proceed unhindered in this scheme and succeed. I would suffer irreparable damage for which I have no adequate remedy at law.*

WHEREFORE, it is respectfully prayed that defendant be required to show cause why a preliminary injunction should not be entered enjoining defendant, Charles Merrill Mount, from communicating his alleged grievances concerning plaintiff, Allen H. Arrow, and/or the law firm Orenstein Arrow Silverman & Parcher, P.C., to colleagues, clients, and/or associates of said plaintiff or law firm to any person not a party to the lawsuit captioned Mount v. Arrow, 75 Civ. 173, presently pending

* This is particularly true in view of the fact that, upon information and belief, defendant, a middle-aged former writer and artist, is presently, and has been for some time, without steady employment and has been living off the largesse of his parents.

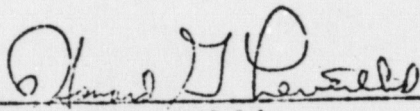
in the United States District Court for the Southern District of New York, or who is not lawfully vested with the responsibility to investigate and/or prosecute said alleged grievances in an official capacity; and from persisting in and continuing a course of conduct serving no legitimate purpose, intended to harass, annoy, alarm and vex plaintiff, and for an order temporarily restraining defendant from such conduct, and for such other and further relief as to this Court may seem just and proper and equitable.

No prior application has been made for the relief sought herein.



ALLEN H. ARROW

Sworn to before me this
17th day of March, 1975.



Notary Public

EDWARD G. LEVENTHAL
Notary Public, State of New York
No. 00000000
Commission Expires 12/31/77



